

J Supreme Court, U.S.
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No. _____

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**IN THE
Supreme Court of the United States**

**RENESAS TECHNOLOGY AMERICA, INC.,
*Petitioner,***

v.

**UNITED STATES AND
MICRON TECHNOLOGY, INC.,
*Respondents.***

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under U.S. trade laws, when the Commerce Department imposes antidumping duties on imported goods, importers make cash deposits of estimated duties at the time of importation. Upon request, Commerce conducts an annual review to determine the actual amount of antidumping duties owed during the period of review. After the review, Commerce orders liquidation of the entries with actual duties assessed based on the review results.

In this case, Commerce was requested to review the antidumping duties owed on imported goods "*manufactured and/or sold*" by a particular producer. After Commerce completed the review, Petitioner Renesas sought to have its entries liquidated and actual duties assessed on its imported goods in accordance with the results of the review, in which Commerce calculated an actual duty rate lower than the initial estimated cash deposit rate. Commerce refused, on the basis that Petitioner had purchased the goods from a *reseller*, rather than directly from the *producer*. On appeal, the Court of International Trade ("CIT") overruled Commerce, but the Federal Circuit reversed the CIT. The question presented is:

When a request for administrative review of antidumping duties encompasses goods manufactured by a producer, does 19 U.S.C. § 1675(a)(2)(C) require that the review results be the basis for the assessment of duties on imports when the importer purchases the goods from a third-party reseller rather than directly from the producer?

LIST OF PARTIES AND RULE 29.6 STATEMENT

The parties to this proceeding in the United States Court of Appeals for the Federal Circuit are the same as the parties to this proceeding: Petitioner Renesas Technology America, Inc. ("Renesas") and Respondents United States and Micron Technology, Inc.

Corporate Disclosure Statement: Renesas Technology Corp., of Japan ("RTC") is the parent corporation of Renesas. Hitachi, Ltd. and Mitsubishi Electric Corporation, which are both publicly held companies, own 55% and 45% of RTC, respectively.

TABLE OF CONTENTS

Question Presented	i
List of Parties and Rule 29.6 Statement	ii
Table of Authorities.....	v
Petition for Writ of Certiorari	1
Opinions Below.....	1
Jurisdictional Statement.....	3
Statutes and Regulations	3
Statement of the Case	5
A. The U.S. Antidumping System.....	5
B. Factual and Procedural Background	9
Reasons for Granting the Writ.....	17
I. The Federal Circuit's Construction of 19 U.S.C. § 1675(a)(2)(C) Imposes Substantial and Needless Costs on U.S. Importers That Purchase from Resellers	17
II. The Federal Circuit's Construction of 19 U.S.C. § 1675(a)(2)(C) Is Erroneous	22

A. The Federal Circuit's Construction of 19 U.S.C. § 1675(a)(2)(C) Ignores the Statutory Context	22
B. The Federal Circuit's Construction Upholds Commerce's Inconsistent Interpretation and Enforcement of 19 U.S.C. § 1675(a)(2)(C)	25
Conclusion.....	27
Federal Circuit Opinion and Judgment.....	App. 1
Court of International Trade Opinion	App. 4
Companion Case: <i>Nissei Sangyo America, Ltd.</i> <i>v. United States</i>	App. 20
<i>Consolidated Bearings I</i>	App. 26
<i>Consolidated Bearings II</i>	App. 50
Federal Circuit Order Denying Rehearing	App. 67

TABLE OF AUTHORITIES

CASES

<i>Consolidated Bearings Co. v. United States</i>	16, 22
348 F.3d 997 (Fed. Cir. 2003)	16, 22
<i>Consolidated Bearings Co. v. United States</i>	16
412 F.3d 1266 (Fed. Cir. 2005)	16
<i>Dofasco Inc. v. United States</i>	
326 F. Supp. 2d 1340 (Ct. Int'l Trade 2004)	20
<i>Micron Tech. Inc. v. United States</i>	
117 F.3d 1386 (Fed. Cir. 1997)	9
<i>Nissei Sangyo Amer., Ltd. v. United States</i>	
No. 04-0496, -1492, 2005 U.S. App. LEXIS 13277 (Fed. Cir. July 1, 2005)	16
<i>Oregon Steel Mills Inc. v. United States</i>	
862 F.2d 1541 (Fed. Cir. 1988)	20
<i>Renesas Tech. Amer., Inc. v. United States</i>	
No. 04-1473, -1474, 2005 U.S. App. LEXIS 13278 (Fed. Cir. July 1, 2005) <i>passim</i>	
<i>Renesas Tech. Amer., Inc. v. United States</i>	
No. 00-00114, 2003 Ct. Intl. Trade LEXIS 105 (Ct. Int'l Trade Aug. 18, 2003)	15

STATUTES

19 U.S.C. § 1673	5, 6, 17
19 U.S.C. § 1673b	6, 23
19 U.S.C. § 1673e	6
19 U.S.C. § 1675	<i>passim</i>
19 U.S.C. § 1677	7, 24
28 U.S.C. § 1295	21

REGULATIONS

19 C.F.R. § 351.107 (2005)	9, 25, 26
19 C.F.R. § 351.212 (2005)	6, 7
19 C.F.R. § 351.213 (2005)	7, 8, 23, 24
19 C.F.R. § 351.221 (2005)	8
19 C.F.R. § 353.22 (1995)	8

MISCELLANEOUS

<i>Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties</i>	
68 Fed. Reg. 23,954 (May 6, 2003)	13
<i>DRAMS of One Megabit and Above From Korea</i>	
58 Fed. Reg. 27,520 (May 10, 1993)	9
<i>DRAMS of One Megabit or Above from Korea</i>	
61 Fed. Reg. 20,216 (May 6, 1996)	11
<i>DRAMS of One Megabit or Above from Korea</i>	
62 Fed. Reg. 965 (Jan. 7, 1997)	11
<i>Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part</i>	
59 Fed. Reg. 30,770 (June 15, 1994)	10
<i>Initiation of Antidumping and Countervailing Duty Administrative Reviews</i>	
60 Fed. Reg. 31,447 (June 15, 1995)	10
N. Gregory Mankiw & Phillip L. Swagel, <i>Antidumping: The Third Rail of Trade Policy</i> , FOREIGN AFF., July/Aug. 2005, at 107.....	17, 18
<i>Notice and Request for Comment on Policy Concerning Assessment of Antidumping Duties</i>	
63 Fed. Reg. 55,361 (Oct. 15, 1998).....	12

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PETITION FOR A WRIT OF CERTIORARI

Renesas respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals is unpublished but is available as *Renesas Technology America, Inc. v. United States*, No. 04-1473, -1474, 2005 U.S. App. LEXIS 13278 (Fed. Cir. July 1, 2005)

and is reprinted in the Appendix ("App.") at 1-2. The order of the court of appeals denying panel and en banc rehearing is available at 2005 U.S. App. LEXIS 21877 and is reprinted at App 67-68.

The court of appeals reversed the Court of International Trade's decision in favor of Renesas, which is unpublished but available as *Renesas Technology America, Inc. v. United States*, No. 00-00114, 2003 Ct. Intl. Trade LEXIS 105 (Ct. Int'l Trade Aug. 18, 2003), and is reprinted at App. 4-19.

The decision of the court of appeals was based in pertinent part on its earlier decisions in *Consolidated Bearings Co. v. United States*, 348 F.3d 997 (Fed. Cir. 2003), *reh'g denied*, 2003 U.S. App. LEXIS 26770 (Fed. Cir. Dec. 20, 2003) ("*Consolidated Bearings I*"), reprinted at App. 26-49, and *Consolidated Bearings Co. v. United States*, 412 F.3d 1266 (Fed. Cir. 2005) ("*Consolidated Bearings II*"), reprinted at App. 50-66, as well as on its simultaneous decision in a companion case to this one, *Nissei Sangyo America, Ltd. v. United States*, No. 04-1469, -1492, 2005 U.S. App. LEXIS 13277 (Fed. Cir. July 1, 2005), *re*t'g denied**, 2005 U.S. App. LEXIS 24124 (Fed. Cir. Oct. 18, 2005) ("*Nissei Sangyo*"), reprinted at App. 20-25. A petition for a writ of certiorari from the Federal Circuit's decision in *Nissei Sangyo* was filed in this Court by Hitachi High Technologies America, Inc., successor to Nissei Sangyo America, on January 17, 2006, and docketed on January 24, 2006, as No. 05-918, *Hitachi High Technologies America, Inc. v. United States*.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Federal Circuit entered its judgment and opinion on July 1, 2005, and denied Renesas' petition for panel rehearing and rehearing en banc on September 19, 2005. Renesas' application to extend the time to file a petition for writ of certiorari until February 2, 2006, was granted by Chief Justice Roberts on December 5, 2005. Supreme Court Docket No. 05A508. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS

19 U.S.C. § 1675(a)(1) provides:

At least once during each 12-month period beginning on the anniversary of the date of publication of ... an antidumping duty order under this subtitle ..., the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

... (B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, ...

and shall publish in the Federal Register the results of such review, together with

notice of any duty to be assessed [or] estimated duty to be deposited.

19 U.S.C. § 1675(a)(2)(A) provides:

For the purpose of paragraph (1)(B), the administering authority shall determine—

- (i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and
- (ii) the dumping margin for each such entry.

19 U.S.C. § 1675(a)(2)(C) provides:

The determination under this paragraph shall be the basis for the assessment of ... antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

19 C.F.R. § 351.213(b) (2005) provides:

- (1) Each year during the anniversary month of the publication of an antidumping ... order, a domestic interested party ... may request in writing that the Secretary conduct an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order ..., if the requesting person

states why the person desires the Secretary to review those particular exporters or producers.

(2) During the same month, an exporter or producer covered by an order ... may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only an exporter or producer ... of the subject merchandise imported by that importer.

STATEMENT OF THE CASE

A. The U.S. Antidumping System

This case arises under the U.S. antidumping law, 19 U.S.C. § 1673 *et. seq.*, which is among the most important U.S. trade laws. Some \$14 billion worth of imports into the United States were covered by antidumping tariffs imposed between 1994 and 2003. Renesas, like many U.S. companies, has been required to pay estimated antidumping duties on imported products. The decision of the Federal Circuit will potentially cost U.S. businesses many millions of dollars by denying them the benefit of the antidumping duty assessment rates calculated for the actual producers of the goods they import, rates